

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 10 of 18

### **REMARKS**

In response to the granted Petition to Revive under the unintentional provision of 37 C.F.R. §1.137(b) mailed April 12, 2007 and the non-final Office Action mailed June 23, 2006 (hereinafter "Office Action"), claims 1, 12, 23, 25, 27, 29 and 31 have been amended merely in order to clarify what is claimed and without any intention of narrowing the scope of the claimed invention. Therefore, claims 1-32 are pending. Support for the instant amendments is provided throughout the as-filed specification. Thus, no new matter has been added. In view of the foregoing amendments and following comments, allowance of all the claims pending in the application is respectfully requested.

### **INFORMATION DISCLOSURE STATEMENT**

An Information Disclosure Statement was filed by Applicant on December 21, 2006. To date, however, Applicant has yet to receive a copy of the Form PTO-1449 (that accompanied this submission) signed and initialed by the Examiner indicating that cited references were considered. Accordingly, Applicant respectfully requests that the Examiner provide a signed and initialed copy of the Form PTO-1449 for this submission with the next Office Action.

### **REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 1-32 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action alleges that the recited limitation "a difference obtained" as recited in the independent claims make the

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 12 of 18

transmitted on a traffic channel between a transmitter and a receiver in a cellular radio network comprising, *inter alia*, calculation of a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period, as recited in independent claim 1.

The Office Action admits that Räsänen does not teach this claim recitation. [Office Action, page 6]. In an attempt to cure the admitted deficiencies of Räsänen, the Office Action relies on column 4, lines 41-44 and column 6, lines 11-13 of Bonta for these features. The cited portions of Bonta, however, do not teach or suggest the recited calculation of a quality value.

The cited portions of Bonta merely disclose calculation of a frame erasure rate data in a modem simulator. *See*, column 4, lines 41-44 of Bonta. In fact, the frame erasure rate of Bonta is only the fraction of frames erased in relation to the total frames; however, Bonta fails to specify what the measurement of the “total frames” represents. *See*, column 6, lines 11-13 of Bonta. Moreover, Applicant submits that the claimed invention is not merely the concept of a frame erasure rate itself, but involves the way the frames are counted. Therefore, the cited portions of Bonta fail to teach or suggest this claimed feature.

Assuming arguendo that Räsänen and Bonta do teach or suggest each and every features of claim 1, there is no proper teaching, suggestion, or motivation to modify Räsänen to include the teachings of Bonta.

As noted above, the Office Action alleges that Bonta at column 4, lines 41-44 and column 6, lines 11-13 discloses the claimed feature of calculating a quality value for a service

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 11 of 18

claims indefinite. [Office Action, pg. 3, ¶4]. Claims 1, 12, 23, 25, 27, 29 and 31 have been amended as suggested in the Office Action to clarify the claimed invention. Accordingly, withdrawal of this rejection is earnestly sought.

### **REJECTIONS UNDER 35 U.S.C. §103**

Claims 1, 5, 10, 12, 16, 21, 23, 25, 27, 29 and 31 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,920,545 to Räsänen *et al.* ("Räsänen") in view of U.S. Patent No. 6,097,957 to Bonta *et al.* ("Bonta"). [Office Action, pg. 4, ¶5]. Claims 2-4, 13-15, 24, 26, 28, 30 and 32 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Räsänen in view of Bonta and in further view of U.S. Patent Application Publication No. 2004/0062274 to Hakansson *et al.* ("Hakansson"). Claims 6-9, 11, 10-20 and 22 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Räsänen in view of Bonta and in further view of U.S. Patent No. 6,097,957 to Minde *et al.* ("Minde"). Applicant traverse this rejection for *at least* the reason that a *prima facie* case of obviousness has not been established.

Claims 1-32 are patentable for *at least* the reasons that : (1) neither Räsänen, Bonta, Hakansson nor Minde, either taken alone or in combination, teach or suggest each and every features of the claims; and (2) assuming arguendo that Räsänen, Bonta, Hakansson, and Minde do teach or suggest each and every features of the claims, there is no proper teaching, suggestion, or motivation to modify Räsänen to include the teachings of Bonta, Hakansson, and Minde.

With regard to claim 1, neither Räsänen nor Bonta, either alone or in combination, disclose, teach or suggest a method of measuring the quality of a circuit-switched service

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 13 of 18

to be transmitted on the traffic channel during that certain time period by subtracting the number of frames transmitted during that certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period. [Office Action, page 6]. The Office Action then alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the quality monitoring scheme of Räsänen with the frame erasure rate calculating scheme of Bonta to enhance the quality monitoring scheme. [Office Action, page 6-7].

Applicant respectfully disagrees. The Office Action has failed to set forth a proper teaching, suggestion, or motivation to modify Räsänen as suggested. A simple statement that a modification or combination would have been obvious to one of ordinary skill in the art is not sufficient to provide a motivation for the proposed combination, absent a teaching within the references themselves, or in the knowledge generally available to one of ordinary skill in the art, suggesting a desirability of combining the references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999), and *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). In addition, "[the] mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). (See MPEP 2143.01). The motivation recited in the Office Action fails to provide reasoning, within the references or otherwise, for modifying Räsänen with the teachings of Bonta. Accordingly, it appears as though the rejection is improperly based on a classic exercise of hindsight reconstruction to allegedly arrive at Applicant's claimed invention.

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 14 of 18

For *at least* this reason, there is no legally proper teaching, suggestion, or motivation to modify Räsänen. Accordingly, the rejection is improper and should be reversed.

For at least the reasons set forth above, a *prima facie* case obviousness for claim 1 has not been established. Accordingly, claim 1 is allowable. Claims 2-11 are allowable at least by virtue of their dependency from claim 1, as well as for the further features they recite.

Claim 12 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest a cellular radio network comprising a transmitter and a receiver, which communicates with the transmitter over a traffic channel on which a circuit-switched service is transmitted and which consists of data frames and associated control channel frames as recited in claim 12. For example, the recited feature of a means for calculating a quality value for a service transmitted on the traffic channel during that certain time period by subtracting the number of frames transmitted during that certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the teachings of Räsänen and Bonta. Claims 13-22 are allowable at least by virtue of their dependency from claim 12, as well as for the further features they recite.

Claim 23 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest a cellular radio network element as recited in claim 23. For example, the recited feature of a means for calculating a quality value for a service transmitted on the traffic channel during that certain time period by

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 15 of 18

subtracting the number of frames transmitted during that certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the teachings of Räsänen and Bonta. Claim 24 is allowable at least by virtue of its dependency from claim 23, as well as for the further features it recites.

Claim 25 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest a cellular radio network element as recited in claim 25. For example, the recited feature of a means for calculating a quality value for a service transmitted on the traffic channel during that certain time period by subtracting the number of frames transmitted during that certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the teachings of Räsänen and Bonta. Claim 26 is allowable at least by virtue of its dependency from claim 25, as well as for the further features it recites.

Claim 27 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest a cellular radio network element as recited in claim 27. For example, the recited feature of a transceiver configured to calculate a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 16 of 18

teachings of Räsänen and Bonta. Claim 28 is allowable at least by virtue of its dependency from claim 27, as well as for the further features it recites.

Claim 29 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest a cellular radio network element as recited in claim 29. For example, the recited feature of a receiver configured to calculate a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the teachings of Räsänen and Bonta. Claim 30 is allowable at least by virtue of its dependency from claim 29, as well as for the further features it recites.

Claim 31 recites similar aspects as claim 1 and is allowable for similar reasons as discussed above with respect to claim 1, and for the additional features recited therein. Räsänen and Bonta, alone or in combination, fail to teach or suggest an article of manufacture for measuring the quality of a circuit-switched service transmitted on a traffic channel between a transmitter and receiver in a cellular radio network, the article of manufacture comprising a machine readable medium containing one or more programs as recited in claim 31. For example, the recited feature of calculating a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period divided by the number of frames transmitted during that certain time period is missing from the teachings of Räsänen and Bonta. Claim 32 is

Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 17 of 18

allowable at least by virtue of its dependency from claim 31, as well as for the further features

it recites.



Applicant: Niemela  
Serial No: 10/091,602  
Filing Date: March 7, 2002  
Page: 18 of 18

**CONCLUSION**

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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